

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 02-0074
Sales and Use Tax
For 1999 and 2000

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ISSUE

I. Public Transportation Exemption – Aircraft.

Authority: IC 6-2.5-3-2; IC 6-2.5-5-27; IC 6-6-6.5-8; IC 6-6-6.5-8(d); IC 6-8.1-5-1(b); Panhandle Eastern Pipeline Co. v. Ind. Dept. of State Revenue, 741 N.E.2d 816 (Ind. Tax Ct. 2001); Indiana Dept. of State Revenue v. Indianapolis Transit System, Inc., 356 N.E.2d 1204 (Ind. Ct. App. 1976).

Taxpayer challenges the decision of the Department of Revenue (Department) assessing sales tax on the taxpayer's purchase of an airplane. Taxpayer maintains that it is entitled to an exemption because the airplane is being used as a support vehicle in taxpayer's transportation business.

STATEMENT OF FACTS

Taxpayer is a commercial trucking firm operating under authority of the Interstate Commerce Commission. Taxpayer bought an airplane in 1999. During October of 2000, the Department sent taxpayer a "Notice of Proposed Assessment" stating that taxpayer's airplane had not been properly registered with the state and that taxpayer was required to pay sales or use tax on the original 1999 purchase. In addition, the Department assessed late fees and interest penalties for the year 2000. Taxpayer disagreed and submitted a protest. An administrative hearing was held during which taxpayer explained the basis for its protest. This Letter of Findings follows.

DISCUSSION

I. Public Transportation Exemption – Aircraft.

The Department maintains that taxpayer should have paid sales or use tax on the purchase price of the aircraft. Taxpayer disagrees stating that the aircraft is exempt from the tax because the vehicle is used in its transportation business.

Indiana imposes an excise tax at the time a taxpayer acquires an airplane. IC 6-2.5-3-2 provides as follows:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

(b) The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:

(1) is acquired in a transaction that is an isolated or occasional sale; and

(2) is required to be titled, licensed, or registered by this state for use in Indiana.

IC 6-6-6.5-8 requires the aircraft purchaser to pay sales or use tax shortly after the aircraft is sold or transferred in Indiana. “A person shall pay the gross retail tax or use tax to the department on the earlier of: (1) the time the aircraft is registered; or (2) not later than thirty-one (31) days after the purchase date.” IC 6-6-6.5-8(d).

It is not disputed that taxpayer acquired the airplane for use within this state. It is not disputed that taxpayer is engaged in the transportation business. The only question is whether or not taxpayer is entitled to the claimed exemption. The exemption to which taxpayer refers is found at IC 6-2.5-5-27 which states that, “Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.”

Taxpayer is in the trucking business. It claims that its acquisition of the airplane was not subject to tax because the airplane is used and “reasonably necessary” for the operation of its trucking business. Specifically, taxpayer indicates that the airplane is used to pick-up and return drivers, and it is used to transport employees to contract negotiations, seminars, meetings, and instructional classes. In addition, taxpayer states that the airplane is used to visit locations to inspect vehicles it is considering purchasing and visit potential parking locations. Further, taxpayer states that the airplane is used to transport spare truck parts in emergency situations.

The Indiana Tax Court has held that the transportation exemption may not be used to prorate a taxpayer’s liability. Panhandle Eastern Pipeline Co. v. Ind. Dept. of State Revenue, 741 N.E.2d 816, 818-19 (Ind. Tax Ct. 2001). Rather, the court has held that the transportation exemption “is an all or nothing exemption.” Id. at 819. “If a taxpayer acquires tangible personal property for predominate use in providing public transportation for third parties, then it is entitled to the exemption. If a taxpayer is not predominately engaged in transporting the property of another, it is not entitled to the exemption.” Id.

Therefore, in order to obtain the benefit of the exemption for a specific purchase, the taxpayer must meet two entirely distinct qualifications; the taxpayer must demonstrate that it is predominately engaged in the business of providing public transportation, and it must also establish that the particular item of personal property is predominately used in providing public transportation. In other words, even if a company is predominately involved in providing transportation, not every particular item it buys qualifies for the exemption.

Assuming for the moment that taxpayer is predominately engaged in providing public transportation, taxpayer has not demonstrated that the aircraft itself is predominately engaged in providing public transportation. Although it may be reasonably assumed that a certain category of purchases – tires, truck parts, repair tools – are “predominately” used by a company predominately involved in providing transportation services, the Department finds no reason to conclude that an aircraft falls within this same category. The Department has no reason to doubt taxpayer’s contention that the airplane is used in its truck business. However, the information taxpayer has provided and the activities taxpayer describes do not inescapably lead to the conclusion that this aircraft is *predominately* used in transportation related activities.

In Indiana Dept. of State Revenue v. Indianapolis Transit System, Inc., 356 N.E.2d 1204 (Ind. Ct. App. 1976), the court agreed that respondent transportation company’s purchase of various items was not subject to sales tax pursuant to the transportation exemption. However, unlike the respondent in Indianapolis Transit, there is no reasonable contention that taxpayer “could not continue operating without the purchases it claimed should be exempted.” Id. at 1209. Based on the information provided, the Department is unable to conclude taxpayer would be prevented from providing transportation services to its customers unless it had purchased and owned the airplane.

The Department is bound by the statute which states, “The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1(b). The Department must conclude that taxpayer has not met that burden.

FINDING

Taxpayer’s protest is respectfully denied.